

SOUTHERN REGIONAL PLANNING PANEL

SRPP No	2017STH019
DA Number	DA-2017/730, lodged 16 June 2017
Local Government Area	Wollongong
Proposed Development	Demolition of existing buildings and ancillary structures and the construction of a mixed use development above basement parking
Street Address	115-117 Keira Street Wollongong – Lot 1 DP 510890 131-135 Keira Street Wollongong – Lot C DP 65920 131-135 Keira Street Wollongong – Lot 1 DP 152849 137-141 Keira Street Wollongong – Lot 2 DP 152849 2 Thomas Street Wollongong – Lot 2 DP 12385 2A Thomas Street Wollongong – Lot B DP 345880 4 Thomas Street Wollongong – Lot 3 DP 12385 6 Thomas Street Wollongong – Lot 4 DP 12385
Applicant/Owner	ADM Architects
Number of Submissions	Six
Regional Development Criteria (Schedule 4A of the Act)	General development over \$20 million Savings provisions in clause 24 have the effect of preserving the development as regionally significant development and the application is required to be referred to the Southern Regional Planning Panel for determination.
List of All Relevant s79C(1)(a) Matters	List all of the relevant environmental planning instruments: s79C(1)(a)(i) <u>State Environmental Planning Policies (SEPPs):</u> State Environmental Planning Policy No. 55 Remediation of Land State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (State and Regional Development) 2011 <u>Local Environmental Planning Policies:</u> Wollongong Local Environmental Plan 2009 <u>Other policies:</u> NSW Apartment Design Guide Wollongong Section 94A Development Contributions Plan 2017 List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii) State Environmental Planning Policy (Coastal Management) 2018 List any relevant development control plan: s79C(1)(a)(iii) Wollongong Development Control Plan 2009 List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv)

	<p>Nil</p> <p>List any coastal zone management plan: s79C(1)(a)(v)</p> <p>Wollongong Coastal Management Plan 2018</p> <p>List any relevant regulations: s79C(1)(a)(iv) e.g. Regs 92, 93, 94, 94A, 288</p> <p>Clause 94</p>
List all documents submitted with this report for the panel's consideration	<p>Architectural Plans by ADM Architects</p> <p>Survey Plan by C Robson & Associates</p> <p>Landscape Plans by Ochre Landscape Architects</p>
Recommendation	Approval subject to conditions contained in Attachment 6
Report by	Anne Starr, Senior Development Project Officer

Summary of s4.15 matters

Have all recommendations in relation to relevant s79C matters been summarised in the **Yes** Executive Summary of the assessment report?

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the **Yes** consent authority must be satisfied about a particular matter been listed and relevant recommendations summarized, in the Executive Summary of the assessment report?

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the **Yes** LEP) has been received, has it been attached to the assessment report?

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **N/A**

Assessment Report and Recommendation Cover Sheet

Executive Summary

Reason for consideration by Southern Regional Planning Panel

The proposal has been referred to Southern Regional Planning Panel as it involves general development with a capital investment value of more than \$20 million being \$24,482,000. At the date of lodgement, general development over \$20 million was regionally significant development. Since then, the threshold has been raised to \$30 million. In this regard, it is noted that the development application was lodged prior to the commencement of recent changes to the Environmental Planning & Assessment Act 1979, Regulation and relevant SEPPs. Clause 24 of SEPP (State and Regional Development) 2011 provides that the development does not cease to be regionally significant development because of the amendments to that Policy.

Proposal

The proposal is for the demolition of existing structures and construction of a mixed use development containing commercial tenancies and residential units over basement parking.

Permissibility

The site is zoned B4 Mixed Use pursuant to Wollongong Local Environmental Plan (LEP) 2009. The proposal is categorised as 'commercial premises' and 'residential flat building' which is permissible in the zone with development consent.

Consultation

The proposal was notified in accordance with Council's Advertising & Notification Procedures. There were six submissions received, one in support and five objections.

Main Issues

The main issues arising from the assessment pertain to:-

- Development departure in respect of building separation (Clause 8.6) of Wollongong Local Environmental Plan (LEP) 2009;
- Design quality. The proposal has been considered by the Design Review Panel on one occasion prior to lodgement and two occasions post lodgement and is now satisfactory to the Panel;
- Heritage considerations

RECOMMENDATION

It is recommended that DA-2017/730 be approved subject to the conditions outlined in Attachment 6

1. APPLICATION OVERVIEW

1.1 DETAILED DESCRIPTION OF PROPOSAL

The proposal comprises the following:

- Demolition of non-heritage listed buildings in Thomas Street
- Demolition of rear extension of heritage listed buildings Keira Street
- Internal alterations to heritage buildings Keira Street
- Construction of a 1 storey commercial building Keira Street
- Construction of a 7 storey mixed use building containing:
 - 83 apartments (11 x 1 bed, 64 x 2 bed & 8 x 3 bed)
 - Includes 9 adaptable apartments
 - 147 car parking spaces over 3 basement levels.
 - Eight maisonette apartments in middle of site fronting proposed Parsons Lane.
 - Ground floor commercial tenancies fronting Thomas Street.
- Waste servicing and car parking for the Keira Street buildings would be in the 7 storey main building.
- Tree removal
- All vehicle access and egress via Thomas Street.
- Through site link between Keira and Thomas Streets
- Proposed FSR 2.63:1
- Proposed height 23.95m

Consolidation of allotments is required. Strata subdivision is not proposed

Amended plans were lodged 11 September 2018 and are the basis of this assessment report.

1.2 BACKGROUND

- DA-2016/178 *'Demolition of buildings and construction of a seven storey commercial and residential building over two parking levels'* – withdrawn 18 May 2016
- Design Review Panel (pre-lodgement) under DE-2016/146 for similar development on 29 November 2016.

Customer service actions

There are no outstanding customer service requests of relevance to the development.

1.3 SITE DESCRIPTION

The 4206m² site is located within the Wollongong City Centre and has frontage to Keira and Thomas Streets. The site is comprised of eight allotments and is within the Keira Street Special Character Area as described by Wollongong Development Control Plan 2009.

The site includes:

- 115-117 Keira Street Wollongong (Lot 1 DP 510890) – vacant with concrete ramp up to rear
- 131-135 Keira Street Wollongong (Lot C DP 65920) – two storey brick shop
- 131-135 Keira Street Wollongong (Lot 1 DP 152849) – two storey brick shop, heritage-listed
- 137-141 Keira Street Wollongong (Lot 2 DP 152849) – two storey brick shop, heritage-listed
- 2 Thomas Street Wollongong (Lot 2 DP 12385) – single storey weatherboard cottage
- 2A Thomas Street Wollongong (Lot B DP 345880) – single storey brick cottage
- 4 Thomas Street Wollongong (Lot 3 DP 12385) – single storey weatherboard cottage
- 6 Thomas Street Wollongong (Lot 4 DP 12385) – vacant bitumen carpark

The land contains buildings on each allotment except for number 4 Thomas Street and 115-117 Keira Street. A demolition plan has been provided and identifies buildings for removal. The two heritage buildings within the site are proposed to be partially demolished at the rear and internally modified.

The site slopes up to Thomas Street from Keira Street and escarpment views are currently available in Thomas Street. Keira Street has a more pronounced commercial character, with smaller scale buildings including heritage buildings providing a fine grain to the streetscape. A feature of the site is the existing coffin ramp on 115-117 Keira Street which serviced the historic Parsons Funeral Home (now vacated). Thomas Street is tree lined and is predominantly residential. A residential flat building has recently been completed at 10 Thomas Street, to the south of the site. Development in the vicinity includes several heritage items (both local and state significance) as shown in Attachment 1.

Keira Street is a classified road.

Property constraints

Council records identify the land as being impacted by class 5 acid sulfate soils

- Heritage items 131-135 Keira Street Wollongong (Lot 1 DP 152849) and 137-141 Keira Street Wollongong (Lot 2 DP 152849)

Council records identify the land as being located within the Coastal zone

Restrictions on title

Lot 3 DP 12385 right of way

Lot 1 DP 152849 right of way

1.4 SUBMISSIONS

The application was notified in accordance with WDCP 2009 Appendix 1: Public Notification and Advertising 15 June -4 July 2018. This included a notice in The Advertiser. Six submissions were received (one in support and five objections) and the issues identified are discussed below.

Concern	Comment
1. Submission of support (no details).	Noted.
2. Traffic	
Thomas Street is one way, and often traffic is queued as vehicles enter the Council car park on Thomas Street.	Noted.
Perhaps consideration given to removing paid parking in Thomas Street or access the development from Keira Street.	Council's traffic engineers have not identified a need for removing the on-street parking. SEPP Infrastructure discourages vehicle access on classified roads, and therefore Keira Street is not a viable option for the driveway.
The eastern approach on Smith to Thomas Street is dangerous now being on a crest of a hill – what are proposed traffic improvements?	The application does not propose changes to this intersection. Requests for changes to existing roads can be made to Council's traffic committee, separate to the development application process.
What are proposed traffic and access treatments at intersection of Thomas and Market Street?	The application does not propose changes to this intersection.
3. Waste collection	
The traffic assessment says bins are to be placed on Thomas Street	A waste room is proposed on site and a condition of consent is recommended requiring bins to be collected on-site. No on-street collection is proposed or supported.
4. Quality of applicant's information	
The DA description is vague	The DA was advertised with the description as per the lodgement documents. The plans and supporting

Concern	Comment
	documents provide details of the proposal.
The term 'generally compliant' in applicant's documentation does not make clear whether complies or not.	Noted, this report provides detailed assessment of the proposal.
The site is not within reasonable walking distance of Wollongong train station	Wollongong train station is approximately 680m from the site and is considered to be within reasonable walking distance.
Should be clearer description on the size of the units as car parking based on unit size	The SEPP 65 compliance statement prepared by the applicant includes a schedule of apartment sizes. RMS car parking rates are used and these are based on the number of bedrooms.
Statement of Environmental Effects heritage section doesn't identify whether state or local significance.	The Heritage Impact Statement by GML identifies the listing type. WLEP 2009 Schedule 5 also identifies whether items are state or local.
5. Non-compliance with policy	
Concerned that applicant is seeking departures from WLEP 2009 and WDCP 2009	The non-compliances are addressed in the application and discussed in this report.
6. Scale of the development	
Size is massive and the building will take away sunlight from eastern side of Thomas Street.	Visual bulk and overshadowing has been considered. Some Thomas Street residents would lose some afternoon sun. The development does not impact on morning and afternoon sun on Thomas Street and complies with ADG requirements.
Six storeys is too big for a small street	WLEP 2009 allows development up to 24m. The scale has been revised since lodgement and the Thomas Street elevation is now more articulated and less imposing.
7. During construction	
How will traffic be managed?	A construction environmental management plan (CEMP) is required as a condition of consent. The CEMP will indicate the works areas and neighbour notification process for road closures and traffic management (e.g. for deliveries and concrete pours).
What are the hours of construction?	A condition of consent is recommended outlining standard hours of operation, which are 7am-5pm Monday to Saturday.

1.5 CONSULTATION

1.5.1 INTERNAL CONSULTATION

Council's geotechnical, stormwater and traffic officers provided conditions of consent, which are included in Attachment 6.

Heritage Officer

Council's Heritage Officer has expressed concern with regard to the implementation of the Conservation Works Schedule prepared by GML Heritage, future management and maintenance of the two heritage buildings, proposed colour of external finishes and potential Building Code of Australia upgrades. These matters have been resolved by conditions of consent as detailed in Attachment 6.

Landscape Architect

Council's Landscape Officer has considered the landscape plan and services utility map recently provided by the proponent and has confirmed that the planting street trees in Thomas Street are possible. Conditions of consent are contained in Attachment 6.

Design Review Panel

The Design Review Panel (DRP) considered a similar proposal prior to lodgement under DE-2016/146 on 29 November 2016. Post lodgement the DRP provided comment on 25 July 2017 and 31 July 2018.

The SRPP at a briefing requested that the application be re-referred to the DRP for specific comments which can be found at attachment 3 (31 July 2018). The DRP acknowledged that the site is complex and challenging due to the steep topography, various boundary conditions and adjoining heritage items. The DRP made recommendations which have been followed by the applicant on the final revised plans and which respond to questions raised by the SRPP.

1.5.2 EXTERNAL CONSULTATION

Endeavour Energy

Council referred the application to Endeavour Energy as required by State Environmental Planning Policy (Infrastructure) 2007. Endeavour Energy has advised it has no objection to the development, and notes that validation of the proposed substation design will be required prior to Construction Certificate. A condition of consent has been included in Attachment 6.

National Trust of Australia Illawarra Shoalhaven Regional Branch

Council invited the National Trust to comment on the application without there being a statutory requirement for consultation. The Trust expressed concern as to the impact of the building bulk and scale upon nearby heritage items. However, the proposed height and floor space ratio are within the limits set for the site. A further concern was the loss of curtilage of the two heritage items within the site due to consolidation. The applicant has provided a draft strata plan however this does not provide adequate detail about funding mechanisms for the extant heritage buildings within a future strata plan for the whole development. Conditions of consent are included in Attachment 6 addressing archival recording, preparation of an interpretation plan and maintenance and repair of the heritage buildings. It is recommended that the applicant's Conservation Management Strategy is formalised via conditions of consent.

NSW Heritage Council

Council referred the application as required by WLEP 2009 in relation to potential archaeological impacts. The Heritage Council recommended conditions of consent regarding separate approvals under the NSW Heritage Act 1977. These are included in Attachment 6.

Roads and Maritime Services

Council referred the application to RMS as required by State Environmental Planning Policy (Infrastructure) 2007. RMS advised they have no objection and considers the application will not impact the classified road (Keira Street).

2. ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 – 79C EVALUATION

2.1 SECTION 79C 1(A)(I) ANY ENVIRONMENTAL PLANNING INSTRUMENT

2.1.1 STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND

The development represents a change of use and therefore Council is required to be satisfied the land is suitable for the proposed residential and commercial use. A Preliminary Site Investigation prepared by Douglas Partners was lodged with the application. In the report, Douglas Partners note the potential for hazardous building materials to be present particularly in areas where cut and fill has occurred. Based on the site walkover and investigation of historic uses, the authors conclude there is low potential for contamination. It recommends that after the buildings have been demolished, further inspection is carried out in areas previously inaccessible.

No concerns are raised in regard to contamination as relates to the intended use of the land which is considered suitable for the proposed development under clause 7 subject to conditions.

2.1.2 STATE ENVIRONMENTAL PLANNING POLICY NO 65—DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

SEPP 65 applies as the development meets the definition of a residential flat building as it is more than 3 storeys and comprises more than 4 dwellings. The application is accompanied by a statement by a qualified designer in accordance with Clauses 50(1A) & 50(1AB) of the Environmental Planning and Environment Regulation 2000.

Schedule 1 of SEPP 65 sets out the design quality principles for residential apartment development. These must be considered in the assessment of the proposal pursuant to clause 30(2)(a) of the Policy and are discussed below.

Principle 1: Context and neighbourhood character

The proposal is considered to be consistent with the desired future character of the area as identified through the development standards and controls applicable to the land. Contextual information has been provided as requested by the Design Review Panel.

Principle 2: Built form and scale

The development is significantly larger than existing or adjoining developments and would significantly alter the skyline backdrop to heritage items in the immediate vicinity. The length of the Thomas Street frontage was questioned by the SRPP at an earlier briefing, and the recommendations of the DRP have been acted upon to reduce the bulk in Thomas Street. The development does not exceed the height control for the site.

Principle 3: Density

The density of the development complies with the maximum FSR permitted for the land. The development is not of a scale that is expected to place unreasonable strain on local infrastructure. Contributions applicable to the development will go towards local infrastructure and facilities. The site is well situated with regard to existing public open space and services.

Principle 4: Sustainability

The proposal is considered acceptable with regard to sustainable design as follows:

- BASIX Certificates provided indicating minimum requirements are met.
- A Site Waste Management and Minimisation Plan has been provided indicating recycling of materials from the demolished dwellings.
- The proposal is an efficient use of land in a location that is close to services and public open space.

Principle 5: Landscape

A landscape plan has been provided and is satisfactory. The proposal provides suitable landscaped areas and communal open space that will improve the amenity of the occupants and soften the appearance of the development from adjoining properties and the public domain. Street trees are required as a condition of consent.

Principle 6: Amenity

The development complies with SEPP 65 and the Apartment Design Guide criteria for ventilation, solar access, storage, parking, building depth, privacy, ceiling height, apartment size, common circulation, private and communal open space, lobbies and adaptable housing.

Principle 7: Safety

The proposal is satisfactory with regard to safety and security. Security measures have been proposed and are incorporated into conditions of consent. These include traffic signalling systems and signage within carparking areas and controlled access to circulation spaces. Additional security benefits result from passive surveillance offered by location of private and communal open space areas relative to apartment windows.

Principle 8: Housing diversity and social interaction

The proposal provides a mix of unit sizes and layouts appropriate to the locality. There are proposed 11 x 1 bed, 64 x 2 bed and 83 x 3 bed apartments. Nine adaptable housing apartments are provided which complies with the 10% minimum required by WDCP 2009.

The development provides outdoor landscaped areas and a through site link. Retail tenancies on the ground floor may offer additional opportunities for social interaction.

Principle 9: Aesthetics

Council's DRP has considered the application on two occasions and also prior to lodgement. The proposal is considered to be of acceptable quality with regard to its appearance.

Apartment Design Guide

An assessment of the application against the Apartment Design Guide (ADG) is contained in Attachment 5. The development involves non-compliance with some design criteria, and as discussed in Attachment 5, are considered acceptable. The non-compliances are:

- 3F Visual Privacy
- 4E Private Open Space and Balconies
- 4M Facades

2.1.3 STATE ENVIRONMENTAL PLANNING POLICY (INFRASTRUCTURE) 2007

The land has frontage to a classified road (Keira Street) and the application was referred to Roads and Maritime Development (RMS) in accordance with clause 104 traffic generating development. RMS has advised it has no objection to the development. All vehicle movements would be via Thomas Street only. Matters for consideration under clause 101 are satisfactory. Clause 102 does not apply.

The application was referred to Endeavour Energy in accordance with clause 45. Endeavour Energy has advised that separate connection approvals would be required prior to Construction Certificate. This has been included in conditions of consent.

2.1.4 STATE ENVIRONMENTAL PLANNING POLICY (BUILDING SUSTAINABILITY INDEX: BASIX) 2004

SEPP BASIX applies to the development and a satisfactory BASIX certificate has been provided.

2.1.5 STATE ENVIRONMENTAL PLANNING POLICY (STATE AND REGIONAL DEVELOPMENT) 2011

The development is regionally significant development in accordance with Part 4 of the SEPP. At the time of lodgement, the monetary threshold for general development as regionally significant development was \$20 million. That amount has since been raised to \$30 million however savings provisions have the effect of keeping the development as a matter for the Southern Regional Planning Panel.

2.1.6 WOLLONGONG LOCAL ENVIRONMENTAL PLAN 2009

Part 2 Permitted or prohibited development

Clause 2.2 – zoning of land to which Plan applies

The zoning map identifies the land as being zoned B4 Mixed Use.

Clause 2.3 – Zone objectives and land use table

The objectives of the zone are as follows:

1 Objectives of zone

- *To provide a mixture of compatible land uses.*

- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.
- To support nearby or adjacent commercial centres without adversely impacting on the viability of those centres.

The proposal is satisfactory with regard to the above objectives.

The land use table permits the following uses in the zone.

2 Permitted without consent

Building identification signs; Business identification signs

3 Permitted with consent

*Advertising structures; Amusement centres; Boarding houses; Car parks; Centre-based child care facilities; **Commercial premises**; Community facilities; Educational establishments; Entertainment facilities; Environmental facilities; Exhibition homes; Function centres; Hostels; Hotel or motel accommodation; Information and education facilities; Medical centres; Multi dwelling housing; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Registered clubs; **Residential flat buildings**; Respite day care centres; Restricted premises; Roads; Self-storage units; Seniors housing; Service stations; Shop top housing; Tourist and visitor accommodation; Vehicle body repair workshops; Vehicle repair stations; Veterinary hospitals; Wholesale supplies*

4 Prohibited

Any development not specified in item 2 or 3

The proposal is categorised as 'commercial premises' and 'residential flat building' as described below and is permissible in the zone with development consent.

Clause 1.4 Definitions

commercial premises means any of the following:

- (a) business premises,
- (b) office premises,
- (c) retail premises.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Note.

Residential flat buildings are a type of residential accommodation— see the definition of that term in this Dictionary.

Clause 2.7 Demolition requires development consent

A demolition plan has been provided and conditions of consent are contained in Attachment 6, including requirements for handling and disposal of hazardous building materials.

Part 4 Principal development standards

Clause 4.3 Height of buildings

The proposed building height of 23.95 m does not exceed the maximum of 24m permitted for the site.

Clause 4.4A Floor space ratio – Wollongong city centre

The proposed development provides 9503m² of residential floor space (incorporating additional car parking as gross floor area) and 1567m² of commercial space. Of the total 11070m² in the development, this equates to proportions of 85.84% residential and 14.16% commercial.

The formula set out in subclause (4) applies as the land is located in the B4 Mixed Use zone and has a street frontage greater than 20m. The formula derives the maximum floor space ratio permitted for the site.

$$(NRFSR \times NR/100) + (RFSR \times R/100) :1$$

$$(3.5 \times 14.16/100) + (2.5 \times 85.84/100) :1$$

$$= 0.4956 + 2.146 = 2.64:1 \text{ or maximum } 11110.56\text{m}^2 \text{ GFA}$$

The proposed 11070m² GFA equates to 2.63:1 FSR which is less than the maximum permitted on the site.

Clause 4.6 Exceptions to development standards

Clause 4.6 provides that development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument, where certain matters are met. The objectives of this clause are:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Approval is sought for departures to Clause 8.6 Building Separation which are detailed below in the discussion around Clause 8.6. The applicant has provided a statement prepared with reference to Clause 4.6 in relation to this building separation generally; this is attached in full at Attachment 4. The statement refers to the Land and Environment Court planning principle and recent judgements.

WLEP 2009 clause 4.6 proposed development departure assessment	
Development departure	Clause 8.6 Building Separation within Zone B3 Commercial Core or Zone B4 Mixed Use
Is the planning control in question a development standard	Yes
<i>4.6 (3)) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</i>	
that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and	The SEE contained a request, which was incomplete. A revised statement dated 14 September 2017 is relied upon.
that there are sufficient environmental planning grounds to justify contravening the development standard.	Yes
<i>(4) Development consent must not be granted for development that contravenes a development standard unless: (a) the consent authority is satisfied that:</i>	
the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and	<p>The applicant's request is based on the following rationale: - compliance with the standard is unreasonable and unnecessary because:</p> <p><u>Western separation</u></p> <ul style="list-style-type: none"> · <i>Parsons' Lane apartments are separated from the rear of Keira Street properties by a topographical height difference and privacy screen – thereby eliminating privacy or overlooking concerns. By the time the proposed building reaches Level 1 these apartments are looking over the roof of the Keira Street properties.</i> · <i>The ADG apportions separation half on the development site and therefore the variation requests only seeks to vary the 50% portion for the subject site</i> · <i>The proposed development is infill development constrained in part by heritage buildings that are unlikely to be demolished and redeveloped</i>

	<ul style="list-style-type: none"> <i>Solar access is achieved</i> <p><u>Northern and Southern separation</u></p> <ul style="list-style-type: none"> <i>WLEP 2009 clause 8.6 requires no separation between neighbouring buildings up to the street frontage height or up to 24m</i> <i>Other buildings in Thomas Street are not built to the boundary making compliance with no-separation requirement unachievable.</i> <i>Some building separation is appropriate</i> <i>No adverse visual appearance, privacy and solar access impacts</i> <p><u>Adequate planning grounds</u></p> <ul style="list-style-type: none"> <i>Half 16m applies, and the balconies only intrude on the relevant 8m setback.</i> <i>Underlying objective or purpose of the standard is achieved</i> <i>Adherence to the requirement for no separation in Thomas Street is unnecessary</i> <i>The non-compliance results in a higher quality outcome for residents and for the public domain at this site which transitions between the higher and lower density zones.</i> <p>The arguments put forward in the statement address the requirements of subclause 3, despite somewhat missing the mark in terms of the required 16m separation in Thomas Street. It is noted that the building is set back from the street boundaries and therefore the concept of street frontage height is irrelevant in this case.</p>
<p>the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>The departures are reasonable and consistent with the public interest. The relevant objectives are satisfied despite the reduced setbacks; solar access, visual appearance and privacy.</p> <p>On the western boundary, the apartments in question are two level apartments and then the next floor above complies with the standard as there are no comparable buildings at that higher level. The rear of the Keira Street buildings outside the site do not direct views or openings to the proposed apartments and having regard to the topography, are unlikely to be exposed to the proposed apartments even if redeveloped.</p> <p>In terms of the southern boundary, the separation is in relation to the recently constructed apartment building at 10 Thomas Street. Solar access has been demonstrated, and the visual appearance of the proposed building has been refined in response to DRP comments. It is now considered of satisfactory presentation and adequately protected from the new building. The proposed balconies on this elevation face south, and are unlikely to be heavily used as the apartments have other aspects available. Notwithstanding, screening is proposed.</p> <p>The proposes apartments that are marginally short of the required separation, and which currently overlook a blank wall and landscaped rear yard of the Smith Street heritage building. Redevelopment of these sites into high density residential or other sensitive use is unlikely, given the allotment size.</p>

	Compliance with the development standard is unnecessary in the circumstances of the case and there are sufficient environmental planning grounds specific to the site to justify contravening the development standard. It is not contended that compliance with the standard would hinder the objects of the Act.
the concurrence of the Secretary has been obtained.	Council has delegation to issue concurrence.

In conclusion, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, there are sufficient environmental planning grounds to justify contravention of the standard. The objectives of the standard and the B4 Mixed Use zone will be maintained despite the non-compliance, and the public interest will be served despite the non-compliance with Clause 8.6.

This being the case, the development departures are supported.

Part 5 Miscellaneous provisions

Clause 5.5 Development within the coastal zone

At the time of lodgement, clause 5.5 was in effect although has since been deleted upon commencement of SEPP (Coastal Management) 2018.

The land is not identified as being impacted by coastal hazards and there are not expected to be any adverse impacts on the coastal environment as a result of the application.

(3)(d) the proposed development will not:

- (i) be significantly affected by coastal hazards, or
- (ii) have a significant impact on coastal hazards, or
- (iii) increase the risk of coastal hazards in relation to any other land.

Clause 5.10 Heritage conservation

The site contains two heritage items and directly adjoins several more (refer Attachment 1). The applicant submitted a Heritage Impact Statement and Conservation Management Strategy prepared by GML Heritage. It is acknowledged in the GML report and by Council's heritage staff that the bulk and scale of the building will have an adverse impact upon the setting of nearby heritage items.

The building reflects the height and floor space ratio controls of WLEP 2009 and presents as a wide tower above basement parking, set behind the existing Keira Street heritage buildings both within the site and on adjoining land. The building bulk is more apparent from Keira Street and Victoria Street.

Recent development at 10 Thomas Street has introduced a residential flat building behind the heritage buildings and altered the backdrop to Keira Street, which has substantially changed the character of the Keira Street area. The development at 10 Thomas Street was approved prior to WLEP 2009 and WDCP 2009 and has only recently been constructed. In that regard, the objectives of WDCP 2009 for the Keira Street special area are largely unattainable due to the changed streetscape.

Since the GML reports were prepared, the architectural plans have been refined in response to SRPP and DRP comments. The building has more articulation, the Parsons' lane treatment is lighter and the overall building bulk somewhat reduced.

Another issue raised by the National Trust and Council staff is the commitment to conservation works for the existing heritage buildings within the site. There are a few inconsistencies between the architectural plans and the GML Conservation Management Strategy which have not been resolved to date, for example the Keira Street façade upgrades are recommended by GML but shown as to be done at a later date on the architectural plans. It is recommended that a condition of consent is applied which requires all recommendations of the GML Conservation Strategy to be completed. This is considered reasonable as the applicant has elected to include the heritage buildings in the concept, reducing their curtilage in the process. Archival recording, interpretation and ongoing funding and management conditions are also recommended.

It is considered that subject conditions of consent in Attachment 6, the provisions of clause 5.10 are satisfied.

Part 7 Local provisions – general

Clause 7.1 Public utility infrastructure

A substation has been shown in the south-eastern corner of the site. Specific approval for utility connections will be required prior to Construction Certificate and conditions of consent are contained in Attachment 6.

Clause 7.3 Flood planning area

The site is not identified as being located at or below the flood planning level.

Clause 7.5 Acid Sulfate Soils

The proposal is identified as being affected by class 5 acid sulfate soil. Conditions of consent regarding excavation and soil quality are contained in Attachment 6.

Clause 7.6 Earthworks

The proposal comprises excavation to a depth of approximately 9m. Council's geotechnical engineer has recommended conditions of consent regarding excavation method and protection of adjoining buildings.

Clause 7.13 Ground floor development on land within business zones

The proposal provides a non-residential use at both Keira and Thomas Streets, with direct access to the building. The applicant lodged a clause 4.6 justification in relation to the apartments in Parsons' Lane, however Council is of the view that these do not occur at ground level for the purpose of clause 7.13 and therefore a development departure is not proposed.

Clause 7.14 Minimum site width

The site exceeds minimum 24m frontage width.

Clause 7.18 Design excellence in Wollongong city centre and at key sites

The proposal is considered to be consistent with the provisions for design excellence as follows:

- The site is suitable for the development
- The use is compatible with the existing and likely future uses in the locality
- The proposal is not expected to result in any adverse environmental impacts.
- The proposal is satisfactory with regard to access, servicing and parking
- Improvements to the public domain are proposed.

Clause 7.19 Active street frontages

Both Thomas and Keira Streets provide active street frontages.

Part 8 Local provisions—Wollongong city centre

Clause 8.1 Objectives for development in Wollongong city centre

The development is consistent with these objectives.

Clause 8.2 Wollongong city centre – land to which this Part applies

The land is located within the Wollongong City Centre.

Clause 8.6 Building separation within Zone B3 Commercial Core or Zone B4 Mixed Use

- (1) *The objective of this clause is to ensure sufficient separation of buildings for reasons of visual appearance, privacy and solar access.*
- (2) *Buildings on land within Zone B3 Commercial Core or B4 Mixed Use must be erected so that:*
 - (a) *there is no separation between neighbouring buildings up to the street frontage height of the relevant building or up to 24 metres above ground level whichever is the lesser, and*
 - (b) *there is a distance of at least 12 metres from any other building above the street frontage height and less than 45 metres above ground level, and*
 - (c) *there is a distance of at least 28 metres from any other building at 45 metres or higher above ground level.*

(3) *Despite subclause (2), if a building contains a dwelling, all habitable parts of the dwelling including any balcony must not be less than:*

- (a) *20 metres from any habitable part of a dwelling contained in any other building, and*
- (b) *16 metres from any other part of any other building.*

(4) *For the purposes of this clause, a separate tower or other raised part of the same building is taken to be a separate building.*

(5) *In this clause:*

street frontage height *means the height of that part of a building that is built to the street alignment.*

Development departures are proposed to this clause, where separation of 20m is required to residential development and 16m to non-residential development. This requirement is greater than that specified in the ADG.

The specific non-compliances are:

- **Basement 1 Plan**
 - 6-7m separation between habitable parts of proposed Parson's Lane apartments and the heritage buildings on Lots 1 and 2 DP 152849 (within the site), where 20m is required. Contextual envelope drawing A04 shows the maximum building height of Lot 2 is RL 28.350 and Lot 1 RL28.660. The Parsons lane apartments have a floor level of RL23.8 on their lower level and RL27.00 on the upper level.
 - 10m separation between Parson's Lane apartments and Lot B DP 65920, where 16m is required. Contextual envelope drawing A04 shows the maximum building height of Lot B is RL28.69. The Parsons Lane apartments have a floor level of RL23.8 on their lower level and RL27.00 on the upper level.
 - 6.6m separation between the Parson's Lane apartments and Lot A DP 417192, where 16m is required. Contextual envelope drawing A04 shows the maximum building height of Lot A is RL28.990. The Parsons Lane apartments have a floor level of RL23.8 on their lower level and RL27.00 on the upper level.
 - 6.6m separation between the Parson's Lane apartments and Lot 2 DP 510890, where 16m is required. Contextual envelope drawing A04 shows the maximum building height of Lot A is RL28.890. The Parsons Lane apartments have a floor level of RL23.8 on their lower level and RL27.00 on the upper level.
 - 10m separation between the Parson's Lane apartments and Lot D DP 398161, where 16m is required. Contextual envelope drawing A04 shows the maximum building height of approved yet unconstructed development on Lot A is RL35.010. Currently, the maximum height appears approximately RL29.00. The Parsons Lane apartments have a floor level of RL23.8 on their lower level and RL27.00 on the upper level.
 - 6m separation between the Parson's Lane apartments and Lot 1 DP 742078, where 16m is required. Contextual envelope drawing A04 shows the maximum building height of Lot 1 is RL35.010. The Parsons Lane apartments have a floor level of RL23.8 on their lower level and RL27.00 on the upper level.
- **Level 1 floorplan**
 - 5.06m separation between apartment B102 and Lot 1 DP 742078, where 16m is required. Contextual envelope drawing A04 shows the maximum building height of Lot 1 is RL35.010. The Parsons Lane apartments have a floor level of RL30.500 on Level 1.

The applicant's justification statement is discussed in clause 4.6.

Clause 8.7 Shops in Zone B4 Mixed Use

No retail tenancy is greater than 400m².

2.2 SECTION 79C 1(A)(II) ANY PROPOSED INSTRUMENT

State Environmental Planning Policy (Coastal Management) 2016

At the date of lodgement, SEPP Coastal Management 2016 was an exhibited draft. It commenced as SEPP Coastal Management 2018 in April 2018 and has no specific provisions for the site.

2.3 SECTION 79C 1(A)(III) ANY DEVELOPMENT CONTROL PLAN

2.3.1 WOLLONGONG DEVELOPMENT CONTROL PLAN 2009

Attachment 5 contains a review of compliance with WDCP 2009. Principal chapters are D13 Wollongong City Centre and E11 Heritage Conservation.

The development proposes non-compliances to Chapter D13 with regard to the following:

- Clause 2.4 building depth and bulk
- Clause 2.5 side and rear setbacks
- Clause 2.7 deep soil zone

These non-compliances are discussed in Attachment 5, and are acceptable as the proposal meets the requirements of the ADG.

2.3.2 WOLLONGONG DEVELOPMENT CONTRIBUTIONS PLAN 2018

Contributions are payable for all development exceeding \$100,000. The estimated cost of works is \$24,482,000 and a levy of 1% is applicable under this plan. An additional 1% levy is payable as the site is located within the Wollongong city centre.

2.4 SECTION 4.15 1(A)(IIIA) ANY PLANNING AGREEMENT THAT HAS BEEN ENTERED INTO UNDER SECTION 7.4, OR ANY DRAFT PLANNING AGREEMENT THAT A DEVELOPER HAS OFFERED TO ENTER INTO UNDER SECTION 7.4

There are no planning agreements entered into or any draft agreement offered to enter into under S93F which affect the development.

2.5 SECTION 4.15 1(A)(IV) THE REGULATIONS (TO THE EXTENT THAT THEY PRESCRIBE MATTERS FOR THE PURPOSES OF THIS PARAGRAPH)

92 What additional matters must a consent authority take into consideration in determining a development application?

- (1) *For the purposes of section 79C (1) (a) (iv) of the Act, the following matters are prescribed as matters to be taken into consideration by a consent authority in determining a development application:*
- (a) *in the case of a development application for the carrying out of development:*
 - (i) *in a local government area referred to in the Table to this clause, and*
 - (ii) *on land to which the Government Coastal Policy applies, the provisions of that Policy,*
 - (b) *in the case of a development application for the demolition of a building, the provisions of AS 2601.*

Condition(s) of consent are recommended with regard to demolition.

93 Fire safety and other considerations

Not applicable

94 Consent authority may require buildings to be upgraded

Conditions of consent are recommended in relation to BCA works and contained in Attachment 6.

2.6 SECTION 4.15 1(B) THE LIKELY IMPACTS OF DEVELOPMENT

Context and Setting:

Context and setting has been assessed with reference to the design excellence matters prescribed by Clause 7.18 of WLEP 2009 and in relation to the impact of the proposed development on nearby heritage items. The development is considered to adequately respond to its setting.

Access, Transport and Traffic:

All vehicle access and egress are via Thomas Street, and therefore impacts on Keira Street (a classified road) are minimised. RMS and Council's traffic engineer have no objection to the development. Additional parking spaces have been included as gross floor area.

Public Domain:

Public domain improvement works are required and detailed in conditions of consent in Attachment 6.

Utilities:

Utility connection approvals are required prior to Construction Certificate. Endeavour Energy has no in-principle objection to the proposed substation location.

Heritage:

The development involves partial demolition of two heritage items within the site and these works are acceptable subject archival reporting and preparation of an interpretation plan. Conditions of consent are recommended addressing ongoing maintenance of the heritage items and archaeological excavation. The application was referred to the Heritage Council as required by WLEP 2009, and the Council advised they had no objection.

Other land resources:

The proposal is considered to contribute to orderly development of the site and is not envisaged to impact upon any valuable land resources.

Water:

The site is presently serviced by Sydney Water, which can be readily extended to meet the requirements of the proposed development. A condition of consent is recommended requiring a section 73 certificate to be obtained.

Soils:

The land contains class 5 acid sulfate soils.

Air and Microclimate:

The proposal is not expected to have any negative impact on air or microclimate.

Flora and Fauna:

Tree removal is proposed and is acceptable. The Ochre landscape plan identifies new plantings.

Waste:

Attachment 6 contains a condition requiring an appropriate receptacle be in place for any waste generated during the construction.

Energy:

The proposal is not envisaged to have unreasonable energy consumption. A satisfactory BASIX certificate has been provided.

Noise and vibration:

Attachment 6 contains conditions regarding construction, demolition and acoustic performance.

Natural hazards:

There are no natural hazards affecting the site that would prevent the proposal.

Technological hazards:

There are no technological hazards affecting the site that would prevent the proposal.

Safety, Security and Crime Prevention:

The application is satisfactory with regard to crime prevention measures.

Social Impact:

No adverse social impacts are anticipated.

Economic Impact:

The proposal is not expected to result in adverse negative economic impact.

Site Design and Internal Design:

Attachment 6 contains a condition requiring all works to be in compliance with the Building Code of Australia. Development standard departures have been addressed by the applicant.

Construction:

Conditions of consent are included in Attachment 6 in relation to construction impacts such as hours of work, erosion and sedimentation controls, works in the road reserve, excavation, demolition and use of any crane, hoist, plant or scaffolding.

Cumulative Impacts:

The proposal is not expected to have any adverse cumulative impacts.

2.7 SECTION 4.15 1(C) THE SUITABILITY OF THE SITE FOR DEVELOPMENT

Does the proposal fit in the locality?

The proposal is considered appropriate with regard to the zoning of the site and is not expected to have any negative impacts on the amenity of the locality or adjoining developments.

Are the site attributes conducive to development?

There are no site constraints that would prevent the proposal. Ongoing maintenance of on-site heritage items is addressed in conditions of consent.

2.8 SECTION 4.15 1(D) ANY SUBMISSIONS MADE IN ACCORDANCE WITH THIS ACT OR THE REGULATIONS

Six submissions have been received which are discussed in Section 1.4.

2.9 SECTION 4.15 1(E) THE PUBLIC INTEREST

The application is not expected to have any unreasonable impacts on the environment or the amenity of the locality. Development departures have been sought and are acceptable. The development is considered appropriate with regard to the zoning and the character of the area and approval is therefore consistent with the public interest.

3. CONCLUSION

This application has been assessed satisfactory having regard to Section S4.15(1) of the Environmental Planning and Assessment Act 1979, the provisions of the relevant planning instruments including Wollongong LEP 2009 and SEPP 65, ADG, Wollongong DCP 2009, Codes and Policies.

The proposed development is permissible with consent and is reflective of the objectives of the B4 Mixed Use zone. The application involves a variation to the building separation under WLEP2009, which has been supported by satisfactory justification.

The proposal also involves variations under WDCCP2009. Variation request statements and justification have been provided for the non-compliances in accordance with Chapter A1 of

WDCP2009. The variations have been considered and are supported in this instance. The design of the development is appropriate as outlined in this report.

Internal and external referrals are satisfactory and submissions have been considered in the assessment. The comments of the DRP have been incorporated into the plans at attachment 2.

It is considered that the proposed development has been designed appropriately given the nature and characteristics of the site and is not likely to result in significant adverse impacts on the character or amenity of the surrounding area.

4. RECOMMENDATION

It is recommended that the development application DA-2017/730 be approved subject to the draft conditions at Attachment 6.

Attachments:

1. Aerial, zoning and heritage map
2. Plans
3. Design Review Panel comments
4. Clause 4.6 development departure request
5. Compliance table SEPP 65, WLEP 2009, WDCP 2009
6. Draft conditions of consent